

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2877**

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**Introduced by Assembly Member Frommer**

February 24, 2006

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An act to *amend Section 14982 of, and to repeal Section 14981 of, the Government Code, and to add Article 5 (commencing with Section 110242) to Chapter 2 of Part 5 of Division 104 of the Health and Safety Code, relating to prescription drugs.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2877, as amended, Frommer. Prescription drugs: importation: procurement.

**Existing**

*(1) Existing law authorizes the Department of General Services to enter into exclusive or nonexclusive contracts on a bid or negotiated basis with manufacturers and suppliers of single source or multisource drugs. Existing law requires specified state agencies to participate in the prescription drug bulk purchasing program. Existing law requires the department to submit a report to the appropriate policy and fiscal committees of the Legislature on activities that have been, or will be, undertaken pursuant to these provisions.*

*This bill would, among other things, require the department to develop strategies for the state to achieve savings through greater use of generic drugs and would revise the report requirements.*

*(2) Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of the packaging, labeling, and advertising*

of food, drugs, devices, and cosmetics, under the administration of the State Department of Health Services.

Existing law, the Pharmacy Law, provides that any pharmacy located outside of this state that delivers, in any manner, controlled substances, dangerous drugs, or dangerous devices into this state is considered a nonresident pharmacy and requires a nonresident pharmacy to register with the California State Board of Pharmacy and comply with all lawful directions of, and requests for information from, the state in which it is a resident.

Existing federal law requires any establishment within any foreign country engaged in the manufacture, preparation, propagation, compounding, or processing of a drug that is imported or offered for import into the United States to register with the federal Secretary of Health and Human Services, report a list of each drug introduced for commercial distribution, and provide required information and statements.

This bill would establish the California RPrescription Drug Web Site Program. The bill would require the State Department of Health Services to administer the program and establish a Web site on or before July 1, 2007, to provide information to California residents about options for obtaining prescription drugs at affordable prices. The bill would, *except as specified*, require that the Web site, at a minimum, provide information about, and establish electronic links to, certain federal, state, and pharmaceutical programs, pharmacies that are located in Canada, the United Kingdom, and Ireland and that meet specified requirements, and other Web sites.

This bill would authorize the department to assess a fee on international pharmacies that the department reviews for possible inclusion on the Web site to offset the cost of reviewing those pharmacies. The bill would require the department's Web site to include price comparisons of prescription drugs, including prices charged by licensed pharmacies in the state and international pharmacies that provide mail-order service to the United States and whose Web sites are linked to the department's Web site.

*This bill would also require the department to establish the California R Prescription Drug Hotline, on or before July 1, 2007, to provide information to consumers and health care providers about options for obtaining prescription drugs at affordable prices. The bill would establish a maximum cost per call to the hotline and require the hotline to provide specific information.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2     following:  
3     (a) Prescription drugs have become essential for ensuring the  
4     health of millions of Californians.  
5     (b) The United States is the largest trade market for  
6     pharmaceuticals in the world, yet American consumers pay the  
7     highest prices for brand name pharmaceuticals in the world.  
8     (c) Increased spending on prescription drugs is a significant  
9     driver of increases in overall health care costs, with spending  
10    nationwide on prescription drugs rising over 15 percent each year  
11    from 2000 to 2002.  
12    (d) Rising out-of-pocket costs for prescription drugs are  
13    placing a growing burden on California consumers, as evidenced  
14    by federal government statistics that show that in 2002 the  
15    increase in consumers' out-of-pocket costs for prescription drugs  
16    was greater than the increase in out-of-pocket costs for all other  
17    health care expenditures.  
18    (e) The price of brand name drugs is rising faster than the rate  
19    of inflation, with a recent study showing that the price of 30  
20    drugs most frequently used by the elderly rose by over four times  
21    the rate of inflation in 2003 and that some drugs increased in  
22    price by 10 times the rate of inflation in that year.  
23    (f) The rising cost of prescription drugs jeopardizes the health  
24    of seniors, the disabled, and other consumers who cannot afford  
25    the medication they need to stay healthy, as shown by a study by  
26    the RAND Corporation that found that when out-of-pocket  
27    payments for prescription drugs doubled, patients with diabetes  
28    and asthma cut back on their use of drugs by over 20 percent and  
29    subsequently experienced higher rates of emergency room visits  
30    and hospital stays.  
31    (g) The rising cost of prescription drugs places a  
32    disproportionate burden on communities of color, as shown in a  
33    report from the Center for Studying Health System Change that  
34    found that African-Americans are about 75 percent and Latinos

1 about 50 percent more likely than nonminorities to not have  
2 purchased a prescription drug in 2001 because of cost issues.

3 (h) A prescription drug is neither safe nor effective to an  
4 individual who cannot afford it.

5 (i) California residents face a growing need for assistance in  
6 finding information about sources for prescription drugs at  
7 affordable prices.

8 *SEC. 2. Section 14981 of the Government Code is repealed.*

9 ~~14981. On or before February 1, 2005, the department shall~~  
10 ~~submit a report to the appropriate policy and fiscal committees of~~  
11 ~~the Legislature on activities that have been or will be undertaken~~  
12 ~~pursuant to this chapter. The report shall include, but not be~~  
13 ~~limited to, all of the following:~~

14 ~~(a) The number and a description of contracts entered into~~  
15 ~~with manufacturers and suppliers of drugs pursuant to Section~~  
16 ~~14977.1, including any discounts, rebates, or refunds obtained.~~

17 ~~(b) The number and a description of entities that elect to~~  
18 ~~participate in the coordinated purchasing program pursuant to~~  
19 ~~Section 14977.5.~~

20 ~~(c) Other options and strategies that have been or will be~~  
21 ~~implemented pursuant to Sections 14978 and 14980.~~

22 ~~(d) Estimated costs and savings attributable to activities that~~  
23 ~~have been or will be undertaken pursuant to this chapter.~~

24 *SEC. 3. Section 14982 of the Government Code is amended to*  
25 *read:*

26 14982. (a) It is the intent of the Legislature that the  
27 Department of General Services, University of California, and  
28 the Public ~~Employees~~ *Employees'* Retirement System regularly  
29 meet and share information regarding each agency's procurement  
30 of prescription drugs in an effort to identify and implement  
31 opportunities for cost savings in connection with this  
32 procurement. It is the intent of the Legislature that the University  
33 of California and the Public ~~Employees~~ *Employees'* Retirement  
34 System cooperate with the department in order to reduce each  
35 agency's costs for prescription drugs.

36 (b) The department shall do all of the following:

37 (1) Share information on a regular basis with the University of  
38 California and the Public ~~Employees~~ *Employees'* Retirement  
39 System regarding each agency's procurement of prescription

1 drugs, including, but not limited to, prices paid for the same or  
2 similar drugs and information regarding drug effectiveness.

3 (2) Identify opportunities for the department, the University of  
4 California, and the Public ~~Employees~~ *Employees'* Retirement  
5 System to consolidate drug procurement or engage in other joint  
6 activities that will result in cost savings in the procurement of  
7 prescription drugs.

8 (3) Participate in at least one independent association that  
9 develops information on the relative effectiveness of prescription  
10 drugs.

11 (4) *Develop strategies, in consultation with the affected*  
12 *agencies, for the state to achieve savings through greater use of*  
13 *generic drugs.*

14 (5) No later than January 1, 2006, and annually thereafter,  
15 develop a work plan that includes, but is not limited to, a  
16 description of the department's annual activities to reduce the  
17 state's costs for prescription drugs and an estimate of cost  
18 savings.

19 ~~(5)~~

20 (6) No later than January 10, 2006, and annually thereafter,  
21 report to the chairperson of the Joint Legislative Budget  
22 Committee and the chairs of the fiscal committees of the  
23 Legislature ~~on any joint activities of the department, the~~  
24 ~~University of California, and the Public Employees Retirement~~  
25 ~~System in the last 12 months in connection with procurement of~~  
26 ~~prescription drugs and any resulting cost savings. This report~~  
27 ~~shall include the work plan described in paragraph (4) and the~~  
28 *appropriate fiscal committees of the Legislature on activities that*  
29 *have been, or will be, undertaken pursuant to this chapter. The*  
30 *report shall include, but not be limited to, all of the following:*

31 (A) *The number and a description of contracts entered into*  
32 *with manufacturers and suppliers of drugs pursuant to Section*  
33 *14977.1, including any discounts, rebates, or refunds obtained.*

34 (B) *The number and a description of entities that elect to*  
35 *participate in the coordinated purchasing program pursuant to*  
36 *Section 14977.5.*

37 (C) *A description of any joint activities of the department, the*  
38 *University of California, and the Public Employees' Retirement*  
39 *System in the last 12 months in connection with procurement of*  
40 *prescription drugs.*

1 (D) Other options and strategies that have been or will be  
2 implemented pursuant to this chapter.

3 (E) Estimated costs and savings attributable to activities that  
4 have been, or will be, undertaken pursuant to this chapter.

5 (F) The work plan that the department is required to develop  
6 pursuant to paragraph (5).

7 (c) Nothing in this section shall be construed to require sharing  
8 of information that is prohibited by any other provision of law or  
9 contractual agreement, or the disclosure of information that may  
10 adversely affect potential drug procurement by any state agency.

11 ~~SEC. 2.~~

12 SEC. 4. Article 5 (commencing with Section 110242) is  
13 added to Chapter 2 of Part 5 of Division 104 of the Health and  
14 Safety Code, to read:

15  
16 Article 5. California R Prescription Drug Web Site Program

17  
18 110242. (a) The California R Prescription Drug Web Site  
19 Program is hereby established.

20 (b) The State Department of Health Services shall administer  
21 the program. The purpose of the program shall be to provide  
22 information to California residents and health care providers  
23 about options for obtaining prescription drugs at affordable  
24 prices.

25 (c) The department shall establish a Web site on or before July  
26 1, 2007, which shall, at a minimum, provide information about,  
27 and electronic links to, all of the following:

28 (1) Prescription drug benefits available to Medicare  
29 beneficiaries, including the Voluntary Prescription Drug Benefit  
30 Program.

31 (2) State programs that provide drugs at discounted prices for  
32 California residents.

33 (3) Pharmaceutical manufacturer patient assistance programs  
34 that provide free or low-cost prescription drugs to qualifying  
35 individuals.

36 (4) International pharmacies that provide mail-order service to  
37 the United States and who meet the requirements of paragraph  
38 (2) of subdivision (d). *If the federal government enacts, by*  
39 *October 15, 2006, procedures for individuals to obtain*

1 *prescription drugs from international pharmacies, this*  
2 *paragraph shall not apply to the department Web site.*

3 (5) Other Web sites as deemed appropriate by the department  
4 that help California residents to safely obtain prescription drugs  
5 at affordable prices, including links to Web sites of health plans  
6 and health insurers regarding their prescription drug formularies.

7 ~~(d) (1) The Web site shall include price comparisons of at least~~  
8 ~~50 commonly prescribed brand name prescription drugs;~~

9 (d) (1) *Unless the federal government enacts, by October 15,*  
10 *2006, procedures for individuals to obtain prescription drugs*  
11 *from international pharmacies, the department's Web site shall*  
12 *include price comparisons of at least 150 commonly prescribed*  
13 *prescription drugs, including typical prices charged by licensed*  
14 *pharmacies in the state and by international pharmacies that*  
15 *provide mail-order service to the United States and whose Web*  
16 *sites are linked to the department's Web site pursuant to*  
17 *paragraph (2).*

18 (2) The Web site shall provide information about, and  
19 establish electronic links to, pharmacies that are located in  
20 Canada, the United Kingdom, and Ireland that provide mail-order  
21 services to the United States and that meet all of the following  
22 requirements:

23 (A) Are licensed by the province or country, as appropriate, in  
24 which they are located.

25 (B) Comply with the requirements of a nonresident pharmacy  
26 as specified in Section 4112 of the Business and Professions  
27 Code, except that for purposes of this section all references to  
28 "state" in subdivision (d) of Section 4112 of the Business and  
29 Professions Code shall be deemed to refer to the province or  
30 other licensing jurisdiction in which the pharmacy is located.  
31 Compliance with this subparagraph shall be determined by the  
32 department in consultation with the California State Board of  
33 Pharmacy.

34 (C) Require a prescription from a patient's personal physician,  
35 who is licensed to practice in the United States.

36 (D) Require the completion of a relevant medical history  
37 profile.

38 (E) Require a signed patient agreement.

39 (F) Ship prescription drugs in tamperproof original  
40 manufacturer containers to individuals in the United States,

- 1 unless the consumer requests to receive the drug in a childproof  
2 container.
- 3 (G) Include a physical address and pharmacy license number  
4 on its company Web site.
- 5 (H) Do not furnish any of the following:
- 6 (i) A controlled substance.
- 7 (ii) A biological product, as defined in Section 351 of the  
8 Public Health Service Act (42 U.S.C. Sec. 262).
- 9 (iii) An infused drug, including, a peritoneal dialysis solution.
- 10 (iv) An intravenously injected drug.
- 11 (v) A drug that is inhaled during surgery.
- 12 (vi) A drug that requires refrigeration or cannot be safely  
13 shipped by mail.
- 14 (vii) More than the prescribed amount of a drug or more than  
15 a three-month supply of any drug.
- 16 (viii) A drug that the consumer indicates he or she has not  
17 previously taken.
- 18 (ix) A drug for which there is no equivalent drug approved for  
19 sale in the United States by the federal Food and Drug  
20 Administration.
- 21 (I) Sell only prescription drugs that have been approved for  
22 sale in the country in which the pharmacy is located by the  
23 agency responsible for ensuring the safety of prescription drugs  
24 in that country.
- 25 (J) Comply with state law regarding the documentation of the  
26 pedigree of prescription drugs.
- 27 (K) Does not require a consumer to sign a waiver of liability  
28 or a release of liability for a negligent act by the pharmacy.
- 29 (L) Maintain a service department to respond to consumer  
30 inquiries and provide information to consumers about how they  
31 may file complaints with the provincial or other applicable  
32 licensing authority.
- 33 (M) Ensure that all physicians, pharmacists, and technicians in  
34 its employ are properly licensed and their licenses are in good  
35 standing.
- 36 (N) Comply with all personal health and medical information  
37 privacy laws applicable to pharmacies located in California.
- 38 (O) Any other requirement established by the department to  
39 ensure the safety, accessibility, and affordability of prescription  
40 drugs.



1 (3) A pharmacy that seeks to be linked to the department's  
2 Web site pursuant to paragraph (2) shall apply to the department.  
3 The department may enter into a contract with a pharmacy that it  
4 determines meets the requirements of paragraph (2). A contract  
5 may be renewed annually upon payment of the fee specified in  
6 paragraph (5) provided, that the pharmacy continues to comply  
7 with the requirements of paragraph (2).

8 (4) The department may terminate a contract with, and delete  
9 an electronic link to, or information about, a pharmacy that the  
10 department determines no longer complies with the requirements  
11 of paragraph (2). The department shall review within 30 business  
12 days any information that it receives regarding a pharmacy's  
13 compliance with the requirements of paragraph (2) and shall  
14 determine whether the information constitutes grounds for  
15 removal of the pharmacy from the Web site.

16 (5) The department may assess a fee on international  
17 pharmacies that the department reviews pursuant to paragraph (2)  
18 to offset the cost of reviewing those pharmacies.

19 (e) The department shall ensure that the Web site established  
20 pursuant to this section is coordinated with, and does not  
21 duplicate, other Web sites that provide information about  
22 prescription drug options and costs.

23 (f) Any information, including the identity of an international  
24 pharmacy, to be posted on the Web site shall first be approved by  
25 professional staff of the department before it is posted.

26 (g) The department shall include on the Web site a notice that  
27 informs consumers about state and federal laws governing the  
28 importation of prescription drugs and the federal Food and Drug  
29 Administration's policy governing personal importation. The  
30 notice shall also inform consumers that a pharmacy linked to the  
31 Web site is licensed in the country in which it is located and that  
32 the department has the right to remove a pharmacy from the Web  
33 site if it violates the requirements of paragraph (2) of subdivision  
34 (d) or the terms of any agreement between the department and  
35 the pharmacy. In addition, the notice shall include a statement  
36 that the state accepts no legal liability with respect to any product  
37 offered or pharmaceutical services provided by a pharmacy  
38 linked to the Web site.

39 110243. (a) *The State Department of Health Services shall*  
40 *establish the California Rx Prescription Drug Hotline to provide*

1 *information to consumers and health care providers about*  
2 *options for obtaining prescription drugs at affordable prices.*  
3 *(b) The department shall establish a low-cost 1-900 telephone*  
4 *number on or before July 1, 2007. Callers shall be provided*  
5 *information about options for obtaining prescription drugs at*  
6 *affordable prices. The cost per call to the hotline shall not exceed*  
7 *50 cents (\$0.50) and the hotline shall, at a minimum, provide the*  
8 *same type of information described in subdivision (c) of Section*  
9 *110242.*

O